Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122
	)	
Numbering Resource Optimization	)	CC Docket No. 99-200
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98
	)	
Developing a Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Intercarrier Compensation for ISP-Bound Traffic	))	CC Docket No. 99-68
	)	
IP-Enabled Services	)	WC Docket No. 04-36

REPLY COMMENTS OF THE
<u>SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION</u>

The South Dakota Telecommunications Association (SDTA) hereby files these Reply Comments to express its support for the "Initial Comments" filed by the National Telecommunications Cooperative Association (NTCA) in response to the Commission's <u>Order on Remand and Report and Order and Further Notice of Proposed Rulemaking</u>, FCC 08-262, released November 5, 2008 ("<u>Order/FNPRM</u>") in the above captioned dockets, and the comments of the National Exchange Carrier Association, Inc. (NECA) to the extent that they provide further support for the NTCA positions. SDTA is an association of rural telephone companies in South Dakota that provide telephone exchange and exchange access service in rural portions of the United States. (A listing of the current SDTA members is attached hereto as Appendix A). All of SDTA's member companies are Universal Service Fund ("USF") recipients, having been designated Eligible Telecommunications Carriers ("ETCs") by the South Dakota Public Utilities Commission. Both USF and intrastate and interstate access constitute critical revenue streams in the high cost environment in which SDTA's member companies operate. SDTA strongly supports the comments and positions of NTCA concerning intercarrier compensation and universal service reform. The following comments are intended to give emphasis to some of the positions advocated in the NTCA filing.

ACCESS CHARGE REFORM SHOULD NOT HARM THE ABILITY OF RURAL CARRIERS TO MAINTAIN THEIR NETWORKS AND SERVICES

SDTA agrees with NTCA and NECA that state commissions should be allowed to voluntarily reduce intrastate access charges to interstate rates and that they should be encouraged to do so by the provision of supplemental federal universal service support. The Commission's proposed mechanism, which seeks to achieve mandatory unification of access rates by effectively preempting the right of state commissions to set intrastate access rates, should not be adopted.

As an initial matter, the FCC's analysis of its legal authority to accomplish such preemption is largely absent. Instead, the Commission simply states that no state preemption would occur under the plan, entirely ignoring the effect of its proposal, and justifies its proposed action based on Sections 251(b)(5) and 251(g) of the 1996 Act. 47 U.S.C. Sections 251(b)(5) and 251(g); Order/FNPRM, App'x C, at paras. 202-224. But, this analysis is wrong as neither Section 251(b)(5) nor Section 251(g) permit the Commission to supersede intrastate access regimes. Accordingly, the proposal to force intrastate access into the proposed unitary reciprocal compensation scheme is flawed legally.

The Commission's proposed reductions in access charges would have a severe impact on consumers and carriers in South Dakota. (See information found in Appendix B, attached hereto, which was also submitted to the Commission as an Ex Parte communication on October 27th). SDTA estimates that the impact of the annual loss in terminating intrastate access revenue for the rural carriers in South Dakota if intrastate access rates are reduced to interstate rates would approximate $6.19 per line per month. The revenue impact of reducing intrastate and interstate access rates to $.0007 would approximate $25.45 per line per month. An additional revenue impact of $13.76 per line per month would result from the loss of intrastate and interstate originating access revenue. Although attempts have been made in the past to rebalance access and end user rates in South Dakota, currently there is not a state universal service fund to soften these impacts. Accordingly, additional federal universal service support will be necessary to ensure that unified rates do not lead to excessive local rates or a degradation of service and facilities in South Dakota.

In its comments, NTCA urges the Commission to allow rate of return carriers to recover lost access revenues through receipt of federal supplemental ICLS money, in exchange for which the state would agree to decrease intrastate access rates to interstate levels, mirror the interstate access structure and allow companies to increase local rates to a federal benchmark rate level. *See* NTCA Comments at page 10. SDTA supports this proposal as a reasonable mechanism to ensure that the process of unifying access rates does not lead to excessive and unaffordable local service rates or negatively affect the maintenance or advancement of telecommunications facilities and services in rural South Dakota.

The Commission should not find that rural rate of return carriers cannot receive new universal service support if state retail rates are deregulated, as proposed in the Commission's order in Attachment A at paragraph 320, because this would be contrary to the Act's universal service provision which requires the Commission to ensure that rates in rural areas are reasonably comparable to rates in urban areas. Even though a rural ILEC may not be restricted from raising local rates by law, universal service support may be required to ensure compliance with the "reasonably comparable" requirement in the Act.

The Commission also should implement a rule requiring providers of interconnected VoIP service to pay intercarrier compensation, including access charges, and it should not classify circuit switched/IP calls (in either direction) as "information services." App'x C at para. 204. Such a finding is not supported by the record, as the Commission has failed to consider the different service characteristics of IP-based offerings. Moreover, the Order/FNPRM's finding on this score will only encourage regulatory arbitrage as carriers reclassify their voice traffic as interconnected VoIP and refuse to pay access charges. Thus, rather than reduce or eliminate regulatory arbitrage, one of the Commission's stated goals of intercarrier compensation reform, this aspect of the Commission's proposal would create an egregious form of regulatory arbitrage. Accordingly, SDTA supports NTCA and NECA in urging the Commission to require providers of interconnected VoIP service to pay intercarrier compensation, including access charges.

Finally, the Commission should not adopt transport rules that would require rural ILECs to transport traffic far outside their existing networks or service areas. Verizon, for example, advocates such a position in its comments on the network edge rules. *See* Verizon comments at pages 53-57. Contrary to Verizon's position, rural ILECs do not have an obligation to transport traffic beyond their service areas. Rather, the position being taken by Verizon attempts to substantially shift transport responsibilities to rural carriers and require rural carriers to subsidize the operations of other carriers. This is patently unfair and contrary to good public policy. Moreover, this position, if adopted, would have serious negative universal service impacts as it would substantially increase the rural LECs' costs of providing service.

SUFFICIENT UNIVERSAL SERVICE MUST BE MAINTAINED FOR RURAL CARRIERS

The continued receipt of federal universal service support is essential for SDTA's member ILEC companies to provide, maintain and upgrade facilities and services for which the support is intended and to keep rates comparable to those in non-rural areas and affordable. Accordingly, SDTA strongly opposes those proposals that would work to freeze universal service amounts on either a total fund or individual company basis and at the same time impose broadband build-out requirements.

The Commission should not adopt the proposal to maintain the current system of support for rural ILECs for only two years. *See* Order/FNPRM, App'x C, at paras 12-18. There is no evidence in the record that freezing support at 2010 levels would be "sufficient," as required by the Act. *See* 47 USC 254(b)(5). There also is no evidence in the record that local end user rates would remain comparable or affordable if high cost support is frozen.

Nor should the Commission adopt the proposal to require rural carriers to offer broadband Internet access service throughout their study areas within five years to remain eligible to receive federal support. *See* Order/FNPRM, App'x C, at paras 19-23; 28-32. There is no evidence in the record that 2010 support levels would be sufficient to build out and maintain broadband service and access to broadband Internet access service, as defined in the Commission's proposed order. On the contrary, the record evidence indicates that some incumbent LECs will not be able to meet the broadband requirement if high cost support is frozen at 2010 levels. *See* Order/FNPRM, App'x C, footnote 97.

Rather, SDTA supports NTCA's comments urging the Commission to include broadband service as a supported service for universal service purposes and to provide federal support that is sufficient for the provision and maintenance of the prescribed broadband service. Federal universal service support for broadband services is critical in areas like those served by SDTA's members because of the very high cost nature of their service territories. Federal universal service support for the provision and maintenance of broadband facilities that is at least somewhat reflective of actual broadband deployment costs will be absolutely essential to ensure that broadband services are available and affordable in these areas.

THE PROPOSED SUSPENSION OR MODIFICATION REQUIREMENTS GO BEYOND THE ACT

SDTA opposes a number of the Commission's proposed guidelines in connection with Section 251(f)(2) of the Act because they would improperly restrict the ability of states to grant suspensions or modifications as expressly allowed by the Act. Specifically, SDTA opposes the Commission's proposal to find that any suspension or modification must be for a limited duration and cannot be indefinite. *See* Order/FNPRM, App'x C, at para 278. SDTA opposes the Commission's proposal to require a state to take a fresh look to determine whether a suspension or modification of more than 1 year should continue. *See* Order/FNPRM, App'x C, at para 285. SDTA opposes the Commission's suggestion that states require a LEC to demonstrate that it is taking concrete steps to enable it to comply with relevant requirements once a suspension or modification ends. *Id.* at para 278. And, SDTA opposes the Commission's proposed interpretation of Section 251(f)(2)(A)(i) and (ii). (This includes the Commission's proposed interpretation of the word "significant" in Section 251(f)(2)(A)(i), and the Commission's proposal that when considering Section 251(f)(2)(A)(i) and (ii), state commissions must evaluate the "net" impact on users of telecommunications services generally and the "net" economic burden, including an assessment of the benefits of the regulatory requirements that the ILEC seeks to have suspended or modified. *Id.* at paras 279.) The Commission's proposals on these points are contrary to the express language of Section 251(f) and seek to impermissibly restrict the ability of carriers to request and state commissions to grant suspension or modification petitions.

CONCLUSION

Based on the foregoing, SDTA urges the Commission to reject each of the three comprehensive reform proposals/orders that have been noticed for comment. Instead, SDTA urges the Commission to take action as outlined in NTCA's Initial Comments (see pp. 3-5). SDTA also urges the Commission to reject any attempt to impermissibly interpret Section 251(f) of the Act as discussed herein.

Respectfully submitted,

SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION

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Dated: December 22, 2008

Appendix A

Members of the South Dakota Telecommunications Association

1. Alliance Communications Cooperative, Inc.
2. Armour Telephone Company
3. Beresford Municipal Telephone Company
4. Bridgewater-Canistota Independent Telephone
5. Cheyenne River Sioux Tribe Telephone Authority
6. Faith Municipal Telephone
7. Fort Randall Telephone Company
8. Golden West Telecommunications Cooperative
9. Interstate Telecommunications. Cooperative
10. James Valley Telecommunications
11. Kadoka Telephone Company
12. Kennebec Telephone Company
13. Knology Community Telephone
14. Long Lines
15. McCook Cooperative Telephone Company
16. Midstate Communications
17. Roberts County Telephone Cooperative. Assn.
18. RC Communications, Inc.
19. Santel Communications
20. Sioux Valley Telephone Company
21. Splitrock Properties, Inc.
22. Stockholm-Strandburg Telephone Company
23. Swiftel Communications (Brookings Municipal Telephone)
24. Tri-County Telcom, Inc.
25. Union Telephone Company
26. Valley Telecomm. Cooperative Assn., Inc.
27. Venture Communications Cooperative
28. Vivian Telephone Company
29. West River Cooperative. Telephone Company
30. West River Telecommunications Cooperative
31. Western Telephone Company

Updated 12/2/2008

APPENDIX B

ICC Reform Proposals - SD Impact Data

Presented by: the South Dakota Telecommunications Association (SDTA) – October 27th, 2008

ICC Reform

- Data From 27 South Dakota Rural LECs – All Members Of The South Dakota Local Exchange Carriers Association (LECA) Pooling Process (List Of Companies Attached)
- In Total The LECA Member Companies Currently Provide Service To 123,240 Rural Switched Access Lines

ICC Reform

- State Of South Dakota Does Not Have A State USF
  - Enabling Legislation Was Proposed And Debated Before State Legislature A Number Of Times, But Not Adopted
- Intrastate Switched Access Charges Based On Embedded Costs Determined Pursuant To Administrative Rules Of The South Dakota Public Utilities Commission
- Intrastate Access Elements Include Carrier Common Line, Local Switching And Local Transport

ICC Reform

- Background Data:
  - Intrastate Access Rates Capped As Of January 2007 At 12.5¢
    - Rate Does Not Reflect All Costs As Determined Pursuant To Existing PUC Rules
  - Calculated Average Interstate Access Rate Based On Minutes Billed:
    - Originating 5.0554¢
    - Terminating 4.6357¢
  - A Total Of 123,240 Switched Access Lines Reported By LECA Member Companies

ICC Reform

- Annual Intrastate Access Revenue Billed By RLECs In Study (July 1, 2007 To June 30, 2008):

	Revenue	Minutes of Use
Originating	$13,409,984	107,279,871
Terminating*	$14,569,036	116,552,290
Total	$27,979,020	223,832,161

- Annual Interstate Access Revenue Billed By The Companies (July 1, 2007 To June 30, 2008):

	Revenue	Minutes of Use
Originating	$6,942,112	137,320,717
Terminating*	$23,500,433	506,944,649
Total	$30,442,545	644,265,366

* Does Not Include All Wireless InterMTA Traffic Delivered Via Direct Or Indirect Connections

ICC Reform

- Subscriber Line Breakdown (Switched Access Or Narrowband Lines Only):
  - Residential & Single Line Business 93,788
  - Multiline Business 29,452
  - Total Subscriber Lines (Current) 123,240
- In Comparison, All RLEC Members Of SDTA, As Of Second Quarter 2008, Served 140,087 Lines

ICC Reform

- First Stage
  - Estimated **<u>Terminating</u>** Revenue Impact (Loss) In Reducing Average Intrastate Switched Access Rate To Average Interstate Access Rate:
    - 12.5¢ Down To 4.64¢
    - Annual Loss In Terminating Intrastate Access Revenue 116,552,290 x 7.86¢ = $9,161,010
    - $6.19 Per Line, Per Month

ICC Reform

- Second Stage
  - Estimated **<u>Terminating</u>** Revenue Impact (Loss) In Reducing Switched Access Rates From Current Levels Down To A Rate Substantially Lower Than Even Current Reciprocal Compensation Rates
    - Study Assumes Verizon Proposed Rate Of $.0007 for Terminating

	Minutes Of Use	Rate Difference	Lost Access	Rate Per Line
Intrastate	116,552,290	12.43¢	$14,487,450	$9.80
Interstate	506,944,649	4.5657¢	$23,145,572	$15.65
Total	623,496,939	n/a	$37,633,022	$25.45

ICC Reform

- Second Stage (Cont.)
  - Revenue Impacts:
    - An Additional Loss Of **<u>Originating</u>** Access Revenue (With Transition To Uniform Reciprocal Compensation Regime):

	Minutes Of Use	Rate Difference	Lost Access	Rate Per Line
Intrastate	107,279,871	12.5¢	$13,409,984	$9.07
Interstate	137,320,717	5.0554¢	$6,942,112	$4.69
Total	244,600,588	n/a	$20,352,096	$13.76

ICC Reform

- Second Stage (Cont.)
  - Total Access Revenue Losses:
    - Terminating Access $37,633,022*
    - Originating Access $20,352,096*
    - Total $57,985,118
    - $39.21 Per Line, Per Month

*Impact Numbers Do Not Include Any Analysis Of Lost Reciprocal Compensation Revenues Due To Proposed Reduction Of Current Reciprocal Compensation Rates And Also Do Not Take Into Account Additional Originating Transport And Transiting Costs That Would Be Imposed On RLECs (Without A "Rural Transport Rule")

ICC Reform

- Subscriber Line Charge Impacts:
  - Monthly Increase Proposed
    - $1.50 For Residential And Single Line Business Customers
    - $2.30 For Multi-line Business Customers
  - Total Single Line Residential And Business $1,688,184 Annually ($1.50 x 93,788 Lines x 12 Months)
  - Total Multi-line Business $812,875 Annually ($2.30 x 29,452 Lines x 12 Months)
  - Total Additional Annual Burden Imposed On End User Subscribers Of Studied Companies - $2,501,059

LECA Member Companies

- ALLIANCE COMMUNICATIONS COOPERATIVE, INC.
- ARMOUR INDEPENDENT TELEPHONE COMPANY
- BERESFORD MUNICIPAL TELEPHONE COMPANY
- BRIDGEWATER-CANISTOTA INDEPENDENT TELEPHONE
- CITY OF BROOKINGS UTILITIES, TELEPHONE DIVISION (Swiftel Communications)
- CHEYENNE RIVER SIOUX TRIBE TELEPHONE AUTHORITY
- CITY OF FAITH TELEPHONE COMPANY
- GOLDEN WEST TELECOMMUNICATIONS COOPERATIVE
- INTERSTATE TELECOMMUNICATIONS COOPERATIVE
- JAMES VALLEY COOPERATIVE TELEPHONE COMPANY
- JEFFERSON TELEPHONE, LLC
- KENNEBEC TELEPHONE COMPANY
- MCCOOK COOPERATIVE TELEPHONE COMPANY

LECA Member Companies (cont'd)

- MIDSTATE COMMUNICATIONS, INC.
- ROBERTS COUNTY TELEPHONE COOPERATIVE ASSN./ RC COMMUNICATIONS, INC.
- SANTEL COMMUNICATIONS COOPERATIVE
- SIOUX VALLEY TELEPHONE COMPANY
- SPLITROCK PROPERTIES, INC.
- STOCKHOLM-STRANDBURG TELEPHONE COMPANY
- TRI-COUNTY TELCOM, INC.
- UNION TELEPHONE COMPANY
- VALLEY TELECOMMUNICATIONS COOPERATIVE
- VENTURE COMMUNICATIONS COOPERATIVE
- VIVIAN TELEPHONE COMPANY
- WEST RIVER COOPERATIVE TELEPHONE COMPANY (BISON, SD)
- WEST RIVER TELECOMMUNICATIONS COOPERATIVE (HAZEN, ND)
- WESTERN TELEPHONE COMPANY

CERTIFICATE OF SERVICE

I, Richard D. Coit, certify that a copy of the foregoing **Reply Comments of South Dakota Telecommunications Association** was served on December 22, 2008, via electronic mail and U.S. Mail, as indicated, to the following persons:

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